

(c) Whether, at the time or times of receipt of payments the individual knew or should have known the amount thereof to be incorrect and failed to inquire or advise the Board of the incorrectness of the amount of the payment or payments;

(d) The extent to which the individual is dependent upon the current payment of his annuity or pension for the necessities of life;

(e) Whether the individual has, by reason of the erroneous payment, changed his position in such manner as to make recovery a severe hardship.

[4 FR 1502, Apr. 7, 1939]

§ 255.13 Compromise of erroneous payments.

The Board or its designee may compromise an erroneous payment, provided such payment does not exceed \$20,000. Compromise of an erroneous payment may not be considered in any case in which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the overpaid individual or his representative. Compromise is at all times within the discretionary authority of the Board or its designee.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§ 255.14 Factors due to be considered in a compromise.

The following indicate the character of reasons which will be considered in approving a compromise:

(a) The debtor's ability to repay the full amount within a reasonable time;

(b) The debtor's refusal to pay the claim in full and the Board's inability to effect collection in full within a reasonable time by other collection methods;

(c) Doubt concerning the Board's ability to prove its case in court for the full amount because of a bona fide dispute as to the facts or because of the legal issues involved;

(d) The cost of collecting the erroneous payment does not justify the enforced collection of the full amount.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

§ 255.15 Suspension or termination of collection action.

Collection action on a Board claim may be suspended or terminated under the following conditions:

(a) Collection action on a Board claim may be suspended temporarily when the debtor cannot be located and there is reason to believe future collection action may be productive or collection may be effected by offset in the near future.

(b) Collection action may be terminated when:

(1) The debtor is unable to make any substantial payment;

(2) The debtor cannot be located and offset is too remote to justify retention of the claim;

(3) The cost of collection action will exceed the amount recoverable;

(4) The claim is legally without merit or cannot be substantiated by the evidence.

[Board Order 67-21, 32 FR 3224, Feb. 24, 1967]

PART 258—HEARINGS BEFORE THE BOARD OR DESIGNATED EXAMINERS

Sec.

258.1 Hearings.

258.2 Witnesses.

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AUTHORITY: Sec. 10, 50 Stat. 314, as amended; 45 U.S.C. 228j, unless otherwise noted.

SOURCE: 43 FR 56888, Dec. 5, 1978, unless otherwise noted.

§ 258.1 Hearings.

(a) To such extent as may be necessary to determine (1) the employee status of any individual or group of individuals, (2) the employer status of any person, and (3) any other matter arising out of or necessary for the administration of the Railroad Unemployment Insurance Act and the Railroad Retirement Acts of 1935, 1937, and 1974, other than those matters specifically provided for in parts 260 and 320 of this chapter, the Board may itself or through one of its members or a designated examiner, conduct hearings,

require and compel the attendance of witnesses and the production of records and documents, administer oaths, take testimony, make all pertinent investigations and findings of fact, and render decisions upon such findings.

(b) Where the Board determines that an oral hearing is necessary to the determination of a matter before it, the Board shall notify all parties to the proceeding that a hearing will be conducted, and, if the hearing is to be before a single Board member or a designated examiner, the notice shall identify the member or examiner authorized to conduct the hearing. The Board or the person authorized to conduct the hearing shall fix a time and place for the holding of the hearing and shall notify all parties thereof.

§ 258.2 Witnesses.

(a) In any hearing held pursuant to the provisions of this part, witnesses may be compelled to appear, give testimony, and produce records and documents.

(b) Designation by the Board of any person as an examiner to preside at and conduct such hearings shall constitute a delegation of authority to such examiner to require and compel the attendance of witnesses and the production of records and documents, to administer oaths, and to take testimony.

§ 258.3 Application for witnesses.

(a) Any person or persons conducting a hearing pursuant to the provisions of this part or part 260 of this chapter may, upon such person's or persons' own motion or upon application of any party to such hearing, issue a subpoena for a witness or witnesses. An application for a subpoena shall be by affidavit filed with the person or persons conducting the hearing within such period of time as will permit service and return of a subpoena prior to the date set for the hearing at which the witness is to appear, but in no case shall such application be filed later than 10 days prior to the date of hearing. The application shall set forth:

- (1) The name and address of the witness;
- (2) The title of the matter to be heard, i.e., names of parties;

(3) The issue to which the testimony of the witness will be directed;

(4) The substance of the testimony which such witness is expected to give or the facts to which such witness will testify; and

(5) The specific books, papers or documents which are requested, if a subpoena duces tecum is applied for.

(b) In addition to the above, the party filing such application shall, at the time of filing, deposit therewith a sum of money sufficient to cover the fees and transportation allowance of the witness, or, in lieu thereof, shall state in the application that satisfactory arrangements have been made with the witness for the direct payment of his or her fees and transportation allowance and any other allowable expense.

§ 258.4 Service of subpoenas.

Service of subpoenas issued under § 258.3 may be made by any individual designated by the Board. Such individual shall deliver a copy of the subpoena to the person or persons named therein, and shall at that time tender to that person or persons the fees for one day's attendance and the transportation allowance authorized by law; *Provided, however,* That if the witness or witnesses be summoned to appear upon motion of the person or persons designated to conduct the hearing, no fees or transportation allowance need be tendered. Fees and transportation allowances shall be in the same amount as is allowed to witnesses in the courts of the United States. The person serving the subpoena shall make certification of the manner and time of service on the original subpoena and shall file such original subpoena with the person or persons by whom it was issued.

§ 258.5 Exhibits.

Copies of all exhibits admitted in evidence at any hearing held pursuant to the provisions of this part shall be furnished by the party offering the same to all other parties participating in the proceedings.

§258.6 Procedure when examiner appointed.

(a) Where an examiner has been designated by the Board under this part to conduct a hearing with respect to a matter before it, the examiner shall preside at the hearing and shall cause all testimony to be recorded. The examiner shall, as soon as practicable following the conclusion of the hearing, mail to each party at the address stated in his or her appearance a free transcript of the record of the proceedings had before the examiner. Thereafter, the examiner shall give all parties participating in the hearing the opportunity to present argument upon both law and facts. Upon conclusion of the proceedings before him or her, the examiner shall prepare a report which, together with the record of the proceedings before him or her, shall be submitted to the Board. The report shall set forth the examiner's findings of fact, conclusions of law, and recommendations as to decision. The report may also contain such discussion of the question raised, both legal and factual, as the examiner may desire to present to the Board. A copy of the examiner's report shall be served by the examiner upon each party participating in the hearing by mailing such copy to each such party at the address stated in his or her appearance. Each party shall, within 30 days after the date of mailing to him or her of the examiner's report, file with the Board and serve upon other parties by mailing to their addresses as stated in their appearances such exceptions in writing as he or she desires to make to the examiner's findings of fact and conclusions of law. Each exception shall specifically designate the particular findings of fact or conclusions of law to which objection is taken, and shall set forth in detail the grounds for the objection. General exceptions and exceptions not specifically directed to particular findings of fact or conclusions of law will not be considered by the Board. Exceptions to findings of fact shall make specific reference by page numbers to those portions of the record upon which reliance is placed.

(b) Each party shall have 10 days after receipt of exceptions taken by other parties in which to file with the

Board replies to those exceptions. Replies to exceptions to findings of fact shall make specific reference by page number to those portions of the record upon which reliance is placed.

(c) The Board may, upon the application of a party and for cause shown, extend the time for filing and serving of exceptions or filing of replies thereto. The Board will render its decision upon the record, the examiner's report, and such exceptions and replies thereto as are made.

(d) The examiner's report shall be advisory only and the Board may, in any case, exercise its right to reject or adopt the examiner's report in whole or in part or adopt such report with modifications. Findings of fact to which no exceptions are taken will, subject only to the power of the Board upon its own consideration to reject or modify, be presumed to be correct.

(e) The decision of the Board shall be communicated to the parties participating in the hearing within 30 days of the date upon which the decision of the Board is entered upon its records.

§258.7 Board decisions and opinions and dissenting opinions.

The following shall apply to all decisions of the Board except decisions relating to matters of internal administration:

A decision made by at least two members of the Board shall constitute the decision of the Board. The decision of the Board shall be stated in a written opinion filed in the record of the proceedings. A dissenting opinion may be stated by a member of the Board who disagrees with the decision of the Board and any such dissenting opinion shall also be filed in the record of the proceedings.

PART 259—INITIAL DETERMINATIONS AND APPEALS FROM INITIAL DETERMINATIONS WITH RESPECT TO EMPLOYER STATUS AND EMPLOYEE STATUS

Sec.

259.1 Initial determinations with respect to employer and employee status.

259.2 Parties to determinations with respect to employer and employee status.